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18 *and Felix P. Camacho, Governor of Guam*

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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF GUAM**

15 **JULIE BABAUTA SANTOS, et. al.,**  
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**Petitioners,**

-v-

**FELIX P. CAMACHO, etc., et. al.**  
**Respondents.**

**CIVIL CASE NO. 04-00006**  
**(Consolidated with Civil Case Nos.**  
**04-00038 and 04-00049)**

**EX PARTE REQUEST FOR**  
**APPROVAL OF ADDITIONAL**  
**FORMS TO ADDRESS "OFFSET"**  
**ISSUE IN IMPLEMENTING**  
**SETTLEMENT OF SANTOS AND**  
**TORRES ACTIONS**

**FILED**  
**DISTRICT COURT OF GUAM**

**MAR - 8 2007** X

**MARY L.M. MORAN**  
**CLERK OF COURT**

**ORIGINAL**

1 The Defendant Government of Guam hereby respectfully requests that the Court approve  
2 the forms attached hereto as Attachments 1 & 2 for use in implementation of the Settlement  
3 Agreement of the *Santos* and *Torres* actions. This request is brought *ex parte* because the forms  
4 at issue are to be used with regard to the “early” payment of the 1997 and 1998 claims, and the  
5 deadline for processing such claims is April 2, 2007. The Government therefore asks that the  
6 Court approve the forms as soon as possible so as to permit time for the forms to be utilized,  
7 which will require substantial time to input the offset information discussed below.<sup>1</sup>

8 The reason for the new, additional forms is because, in preparing to make the “early”  
9 payment of the 1997/1998 claims, the Government has encountered an additional challenge not  
10 addressed by any existing forms. Specifically, the Settlement Agreement states in section  
11 VI(d)(ii) that any payments of the EIC under the settlement are subject to offset under 26 U.S.C.  
12 § 6402. (In essence, these are offsets for unpaid child support and liabilities owed by the taxpayer  
13 to the government). But the settlement also calls for the “early” payments, where persons eligible  
14 for 1997 and 1998 will receive a partial (as to 1998) or full (as to 1997) payment now in the form  
15 of a check, but also receive notices (Settlement Agreement Exhibit D) explaining that if they  
16 deposit the early payment checks, they forfeit the right to opt-out & will be bound by the  
17 settlement if the Court grants final approval.

18 The problem is that Settlement Agreement Exhibit D does not address the possibility of  
19 offsets, and yet many of the early payments are subject to offsets. As to tax year 1998, for  
20 example, approximately 3,200 of the eligible claimants (out of about 11,000 accepted claims)  
21 have been found to owe offsets. In some cases, the amount is such that the offset will completely  
22 cover the “early” payment the claimant would have received (“complete offsets”), and in other  
23 cases, they will still be owed something because the offset is only part of the amount (“partial  
24 offsets”).

25 Accordingly, the Government has developed draft forms for each scenario (partial and  
26 complete offsets), which are attached hereto as Attachments 1 & 2. The first page of both forms  
27

28  
<sup>1</sup> Oral argument is not requested unless the Court deems it necessary, or if it might assist the Court in being able to render a decision in the short amount of time available.

1 is a modified version of Settlement Agreement Exhibit D (the “early” payment notice) that adds  
2 in the information regarding the offset. The second page is the notice informing the Class  
3 Member of the offset and its basis, which is modeled on the usual notice of offset used by DRT,  
4 but adapted for this purpose.

5 Solely as to the “complete offset” notice (Attachment 2), there is a third page to the  
6 notice. As the Court will recall, presently persons receiving an “early” payment check, by  
7 depositing that check, are agreeing that *if* the Court grants final approval, they will be bound by  
8 the Settlement Agreement. Obviously, persons subject to complete offsets will not be receiving a  
9 check. Thus, the third page included as to “complete offsets” is a form that those persons subject  
10 to a complete offset can return to manifest their consent. It will be sent with a pre-addressed  
11 envelope.

12 Based upon these forms, persons subject to offsets will receive the same rights as those  
13 not subject to offsets. That is, they will receive the class notice (Settlement Agreement Exhibit  
14 C) and modified versions of the “early” payment notice (Settlement Agreement Exhibit D). They  
15 also will receive notice of the potential offsets. Finally, and most importantly, they will receive  
16 the same opportunity to decline to participate in the early payment program, either by declining to  
17 deposit their check (if they were subject to a partial offset) or declining to return the enclosed  
18 form (if they were subject to a complete offset).<sup>2</sup>

19 In compliance with L.R. 7.1(j), the parties in the *Santos* and *Torres* action were provided  
20 notice of the Government’s intent to bring this *ex parte* request. Counsel for the Director of  
21 Revenue & Taxation, and for the Director of Administration, support this request. Lead Class  
22 Counsel, Mike Phillips, has also stated that they also support the request. Counsel in the cases  
23 are:

24  
25 //

26 //  
27 \_\_\_\_\_

28 <sup>2</sup> In no case will any offset based upon an “early” payment be applied unless such consent is obtained. Thus, if the check is not cashed or the form is not returned, the Government will wait until the Court grants final approval before applying the offset.

1 Counsel for Santos, Torres and the Class:

2 Michael F. Phillips, Esq.  
3 **PHILLIPS & BORDALLO, P.C.**  
4 410 West O'Brien Drive, Suite 102  
Hagåtña, Guam 96910

5 Ignacio C. Aguigui, Esq.  
6 Peter Perez, Esq.  
7 **LUJAN AGUIGUI & PEREZ LLP**  
8 300 Pacific News Building  
Hagåtña, Guam 96910

9 Counsel for Defendants Ilagan & Perez

10 Rawlen M.T. Mantanona, Esq.  
11 Raymond Souza, Esq.  
12 **CABOT MANTANONA LLP**  
13 BankPacific Building, 2<sup>nd</sup> Floor  
14 825 S. Marine Corps Drive  
Tamuning, Guam 96913

15 These papers will be served on all parties in the *Santos* and *Torres* actions immediately  
16 after filing. Out of an excess of caution, the papers shall also be served on counsel for the *Simpao*  
17 plaintiffs because this case is consolidated for pretrial proceedings with that case, although no  
18 relief is sought in that case. Counsel for the *Simpao* plaintiffs are:

19 Curtis Van de Veld, Esq.  
20 Van De Veld, Shimizu, Canto & Fisher  
21 Suite 101, De La Corte Building  
22 167 East Marine Drive  
Hagåtña, Guam 96910

23 Dated this 8th day of March, 2007.

24 OFFICE OF THE GOVERNOR OF GUAM  
25 CALVO & CLARK, LLP  
26 Attorneys at Law  
Attorneys for the Government of Guam  
and Felix P. Camacho, Governor of Guam

27  
28 By:

  
DANIEL M. BENJAMIN

# **ATTACHMENT 1**

**IMPORTANT NOTICE**  
**READ *BEFORE* CASHING OR DEPOSITING**  
**ACCOMPANYING CHECK**

Records at the Guam Department of Revenue and Taxation indicate that you filed a claim for the earned income tax credit for tax year 1997 and/or tax year 1998 that has yet to be paid. You are receiving the accompanying check because the Government of Guam has agreed to settle all claims for the earned income tax credit for tax years 1995-2004. That settlement is contingent upon final approval by the Guam District Court. But, the Government has agreed as part of that settlement to make an "early" payment for tax years 1997 and 1998 prior to final Court approval of the Settlement. This check is a payment for tax year 1997 or 1998 under the terms of that Settlement.

Based upon records at the Guam Department of Revenue and Taxation, you owe money that is subject to an administrative offset under 26 U.S.C. § 6402. This check represents the remainder of the amount that the Department of Revenue and Taxation calculated you were owed under the settlement for tax year 1997 or tax year 1998, *after offsets were deducted*. The exact amount of offsets deducted, and the basis for the deduction, is explained in the accompanying "Offset of Overpayment Notice." Application of the offset will reduce your outstanding obligations. The offset will only be made at this time if the accompanying check is deposited or cashed.

**BY CASHING OR DEPOSITING THE ACCOMPANYING CHECK, YOU WILL BE AGREEING TO BE PERMANENTLY BOUND BY THE TERMS OF THAT SETTLEMENT IF IT RECEIVES FINAL COURT APPROVAL.** This applies to *all tax years* covered by the Settlement, which are tax years 1995-2004. The complete terms of that settlement are explained in the accompanying "Notice of Pendency and Proposed Settlement of Class Action." Please read that document carefully.

If you cash or deposit your check, but final approval of the settlement is denied, you will not be bound by the Settlement. In the event final approval is denied, the payment accepted shall operate as a payment (based solely on the dollar value actually paid) of a claim for tax year 1997 and/or 1998, should you later be found to have a valid claim for that tax year.

Any payment now is not, and shall not be construed to be, an admission of liability or obligation to pay any present or future claim, except as stated in the Settlement. If you refuse the payment or fail to deposit the accompanying check within sixty days of the date stated on the check, you will retain the right to opt-out of the Settlement prior to final approval based upon the procedures set forth in the accompanying "Notice of Pendency and Proposed Settlement of Class Action." If you refuse a payment or fail to deposit your check within sixty days of the date stated on the check, but you do not opt-out of the Settlement under the procedures set forth in the accompanying "Notice of Pendency and Proposed Settlement of Class Action," you will still be entitled to payment under the terms of the Settlement upon final approval of the Settlement, which payment will still be subject to any offsets that may still be owing at that time.

Department of Revenue and Taxation  
Government of Guam  
P.O. Box 23607  
Barrigada, Guam 96921

[name]  
[street name line one]  
[street name line two]  
[city, state, zip]

Notice Date:  
Document Locator Number:  
Taxpayer Identifying Number:  
Spouse Identifying Number:  
Tax Form:  
Tax Period:

**OFFSET OF OVERPAYMENT NOTICE RE: "EARLY" PAYMENT OF 1997 OR 1998 EIC**

We intend to retain part of the 1997 or 1998 earned income tax credit identified above in full or partial satisfaction of the following:

[insert type of obligation]

**Organization**

**Offset Amt**

**SUMMARY**

**Before offsets**

Refunded Amount on return . . . . .

**Offsets**

Other GovGuam offset . . . . .

**After offsets**

A check for the balance of your 1997 or 1998 earned income tax credit is included herewith. The obligation was referred to us by \_\_\_\_\_[insert name of entity]\_\_\_\_\_ under the authority of the Section 6402(e) of the Guam territorial tax code. If you believe that this obligation is in error or have questions concerning it, you should contact:

[name of entity]  
[street name line one]  
[street name line two]  
[city, state, zip]  
[telephone numbers]

Sincerely,

ARTEMIO B. ILAGAN  
Director

By:

Lawrence S. Terlaje  
Supervisor Income Tax  
Assistance and Processing Branch

# **ATTACHMENT 2**

# **IMPORTANT NOTICE**

## **READ *BEFORE* RETURNING THIS FORM**

Records at the Guam Department of Revenue and Taxation indicate that you filed a claim for the earned income tax credit for tax year 1997 and/or tax year 1998 that has yet to be paid. You are receiving this form check because the Government of Guam has agreed to settle all claims for the earned income tax credit for tax years 1995-2004. That settlement is contingent upon final approval by the Guam District Court. But, the Government has agreed as part of that settlement to make an "early" payment for tax years 1997 and 1998 prior to final Court approval of the Settlement. This form concerns your payment for tax year 1997 or 1998 under the terms of that Settlement.

Based upon records at the Guam Department of Revenue and Taxation, you owe money that is subject to an administrative offset under 26 U.S.C. § 6402. The exact amount of offsets deducted, and the basis for the deduction, is explained in the accompanying "Offset of Overpayment Notice." Application of the offset will reduce your outstanding obligations. The offset will only be made at this time if the accompanying form is returned.

**BY RETURNING THE ACCOMPANYING FORM, YOU WILL BE AGREEING TO BE PERMANENTLY BOUND BY THE TERMS OF THAT SETTLEMENT IF IT RECEIVES FINAL COURT APPROVAL.** This applies to *all tax years* covered by the Settlement, which are tax years 1995-2004. The complete terms of that settlement are explained in the accompanying "Notice of Pendency and Proposed Settlement of Class Action." Please read that document carefully.

If you return the form, but final approval of the settlement is denied, you will not be bound by the Settlement. In the event final approval is denied, the offset applied shall operate as a payment (based solely on the dollar value actually paid) of a claim for tax year 1997 and/or 1998, should you later be found to have a valid claim for that tax year.

Any payment now is not, and shall not be construed to be, an admission of liability or obligation to pay any present or future claim, except as stated in the Settlement. If you fail to return this form within sixty days of the "Notice Date" stated on your "Offset of Overpayment Notice," you will retain the right to opt-out of the Settlement prior to final approval based upon the procedures set forth in the accompanying "Notice of Pendency and Proposed Settlement of Class Action." If you fail to return this form within sixty days of the "Notice Date" stated on your "Offset of Overpayment Notice," but you do not opt-out of the Settlement under the procedures set forth in the accompanying "Notice of Pendency and Proposed Settlement of Class Action," you will still be entitled to payment under the terms of the Settlement upon final approval of the Settlement, which payment will still be subject to any offsets that may still be owing at that time.

Department of Revenue and Taxation  
Government of Guam  
P.O. Box 23607  
Barrigada, Guam 96921

[name]  
[street name line one]  
[street name line two]  
[city, state, zip]

Notice Date:  
Document Locator Number:  
Taxpayer Identifying Number:  
Spouse Identifying Number:  
Tax Form:  
Tax Period:

**OFFSET OF OVERPAYMENT NOTICE RE: EARLY PAYMENT OF 1997 OR 1998 EIC**

We intend to retain all of the 1997 or 1998 earned income tax credit identified above in full or partial satisfaction of the following:

[insert type of obligation]

<u>Organization</u>	<u>Offset Amt</u>
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SUMMARY

Before offsets  
    Refunded Amount on return .....  
Offsets  
    Other GovGuam offset .....  
After offsets

The obligation was referred to us by \_\_\_\_\_ [insert name of entity] \_\_\_\_\_ under the authority of the Section 6402(e) of the Guam territorial tax code. If you believe that this obligation is in error or have questions concerning it, you should contact:

[name of entity]  
[street name line one]  
[street name line two]  
[city, state, zip]  
[telephone numbers]

Sincerely,  
  
ARTEMIO B. ILAGAN  
Director

By:  
Lawrence S. Terlaje  
Supervisor Income Tax  
Assistance and Processing Branch

# **CONSENT FORM FOR OFFSET OF SETTLEMENT PAYMENT**

I, \_\_\_\_\_ have reviewed the accompanying notices and hereby agree to  
(print name)  
application of the offset stated in the accompanying Offset of Overpayment Notice. My Social  
Security number or Taxpayer I.D. number is \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_.  
(SSN No. or TPI No.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
(day) (month)

\_\_\_\_\_  
(signature)

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## **INSTRUCTIONS:**

1. Please ensure you have provided all requested information.
2. To submit this form, you can either: (a) file it at Guam Department of Revenue & Taxation during normal business hours; or (b) mail this form in the enclosed, pre-addressed envelope (after placing sufficient postage upon it) to Department of Revenue & Taxation, Attention: EIC Program, P.O. Box 23607, Barrigada, GU 96921.
3. This form must be filed or post-marked no later than sixty days after the "Notice Date" stated on your "Statement of Offset."
4. Please keep a copy of this consent form for your records.